

JOSEPH JANNEY—HEIRS OF.

JANUARY 9, 1857.—Laid upon the table and ordered to be printed.

Mr. TAYLOR, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the memorial of the heirs of Joseph Janney, have had the same under consideration, and now report:

The memorialists claim indemnity from the United States for tobacco destroyed during the late war with Great Britain, while in store in warehouses at Magruder's Ferry and at Benedict.

The case of the memorialists cannot be distinguished from the cases of the representatives of Rinaldo Johnson and Ann E. Johnson, and of William G. Ridgeley and Rogers and Lansdale, heretofore reported on in considering Senate bills Nos. 255 and 278; and for the reasons given in those reports your committee recommend that the claim of the memorialists be rejected.

The memorial of the heirs of Joseph Janney.

To the Senate and House of Representatives of the United States:

Your petitioners respectfully represent that they claim indemnity from the United States for property destroyed during the late war with Great Britain; that, on the breaking out of the war, they had large quantities of tobacco in store at Magruder's warehouse, in Prince George's county, Maryland, and Benedict warehouse, in Charles county; that the hogsheads of tobacco which were in the Nottingham warehouse were removed by the order of the commanding officer, and erected into a breastwork, with the view of giving protection to our troops; that the village was in imminent danger of being assailed by the enemy, hence the necessity for the defence of the place; that this necessity was so obvious that nobody pretended to deny it; and the commanding officer would have deserved a severe rebuke had he abstained from using the tobacco as a means of defence. The exercise of this power in the present instance was under circumstances of no ordinary occurrence. The unexpected advance of the

British troops upon the villages bordering on the Patuxent river in 1814 found this section of the Union wholly unprotected. In June, 1814, when the enemy ascended the Patuxent river, within twenty-eight miles of Washington city, there was not a breastwork, nor a fortification of any description—not a solitary cannon planted to sound an alarm, or check their progress to the Capitol of this Union. What was to be done? Under these trying circumstances, the commanding officer did not hesitate. He lost no time in strengthening his position and fortifying himself in the best manner time and circumstances would allow. If the necessity exist, then that case has arrived in which the government may take private property, or endanger its safety, for the public defence. The government did this. They did it through their officer, and the result was a loss to said heirs. Your petitioners pray that as the case of George Armstrong is in all respects the same with this, so far as the tobacco warehouses at Benedict and Magruder's are concerned, the said papers, affidavits, depositions, letters, and statements, &c., &c., be adopted as proofs in this case. It is well established by the depositions herewith filed that the tobacco, out of which our troops constructed a fortification, was destroyed and carried away by the British in consequence of its being used as a breastwork.—(See James Baden and Major Biscoe's affidavits.) It must be recollected by all who are conversant with the events of the late war, that during the year 1814, that Benedict was little else than a garrisoned village. Both the regular army and militia made it a place of rendezvous.—(See the history of debarkation of the British troops for Washington city in 1814. See Major Biscoe's statement, and the affidavits and testimony filed in the case of Neale.)

In relation to the destruction of the warehouse at Magruder's, in Prince George's county, Maryland, the foregoing remarks may be considered as applicable, to some extent, in explaining the views upon which the claim for indemnification is founded.

The fact is supported by unquestionable testimony that the warehouses were occupied by our troops as a shelter and protection. The occupation of buildings need not be a literal occupation even for a single night. If in the presence of an enemy, it amounted to the occupation which should entitle the owner of the property to full compensation. This position must be conceded. While thus occupied, if it is destroyed, so that occupancy was the cause of its destruction, the government is bound to grant compensation. The individual who owned the property suffered from a new character induced upon his property by the act of the government. The petitioners will further state that the despatches of Admiral Cockburn, in giving an account of his depredations on the Patuxent river, says that he burnt the warehouses, as he considered them military posts, thus bringing the case precisely within the principles as established by the legislation of Congress.

Extracts from Cockburn's despatches, June 22, 1814.—"He says that a detachment of sailors and marines were landed on both sides of the river, (Patuxent,) and the enemy's militia had assembled to the number of three to five hundred, retreating before them in the woods;

the *marines destroyed the tobacco stores* and several houses *which formed military posts.*" Again, he says: "That Captain Barrie advanced from Benedict to Marlborough, a schooner was found loaded with tobacco, after which they burnt tobacco stores containing two thousand four hundred hogsheads; the detachment re-embarked."

Your petitioners will now proceed to the investigation of the circumstances under which the tobacco stored in the warehouse at Benedict, Charles county, Maryland, was destroyed and carried away by the naval forces of Great Britain.

In June, 1814, the naval forces of Great Britain ascended the Patuxent river with a very considerable number of vessels of war. On the 15th of June they reached the village of Benedict. For the purpose of resisting the aggressive movements of the enemy, and to arrest their depredations, a portion of the troops of the United States had been stationed in Benedict. The commanding officer of the army finding the station a very exposed one, and without any fortification behind which his men could protect themselves in the event of a conflict with the enemy, and to oppose, if possible, their landing, he was compelled to resort to the only means available, to seize and remove the hogsheads of tobacco, then stored in the warehouse, for the purpose of erecting a breastwork. The order to roll the hogsheads of tobacco out of the warehouse and to construct a breastwork was given by an officer of the United States army. That a battery was constructed out of said tobacco.—(See Cusick's testimony.)

This was the conversion of private property into the public use, and would grow out of that state of necessity which is superior to all law, and flows from what the civilians called the eminent domain which belong to all governments, and is founded on the irresistible dictate and impulse of self-preservation. Every writer in treating of the rights of sovereignty says, that when a nation is at war, it has a right to avail itself of all its means.

The rule laid down in the laws of Congress is, that if the United States, in the prosecution of a war, occupy and use the property of a citizen for military purposes, so as to make it the legitimate object for capture and destruction, according to the rules of civilized warfare, and if, in consequence of such occupancy, the enemy be drawn upon, and do capture and destroy it, the owner shall be compensated out of the public treasury. This is manifestly right, and it is no more than simple justice, under the provision of the Constitution which prohibits the taking of private property for public use without just compensation.

As to the extent of the occupation of the village of Benedict by the British troops, it must be recollected by all who are conversant with the history of the late war, that the country bordering on the Patuxent river, during the year 1814, was little else than a great cantonment. The British troops held possession of this village during the whole summer and part of the fall of 1814. The regulars had been driven out of possession by the arrival of a superior naval force, and the property was destroyed by the enemy. It would be absurd to say that the government would not pay for its destruction, because our troops were not in actual position at the time of its destruction. Your

petitioners beg leave to state that the abandonment of the possession should be of such a character that the owner could take possession and enjoy all the rights to which he was entitled, otherwise the troops would be in constructive possession.

That the regulars were stationed in the village of Benedict is a fact, sustained by the affidavit of Austin Cusick, and by the letter of the late Hon. Clement Dorsey to General Philip Stuart, then commander of the militia forces in this section of the State. Your petitioners will remark, that the said Hon. Clement Dorsey was the aid-de-camp to General Philip Stuart.—(See Hon. Daniel Jenifer's statement.)

By a reference to Admiral Cockburn's despatches to Admiral Cochrane, the statement of Austin Cusick is fully sustained and corroborated. He says, "that on the 15th of June, 1814, the *Narcissus* arrived, and Captain Barrie determined to proceed up the river in twelve boats, having in them one hundred and eighty marines, and thirty of the *black colonial corps*; they proceeded to Benedict, where a party of regulars fled, leaving behind several muskets and a part of their camp equipage."

Again, by a reference to the Federal Republican, bearing date 24th June, 1814, which contains a diary of the operations of the enemy from the time Barney's flotilla entered the Patuxent, it will be found that Commodore Barrie, in a conversation with the honorable Clement Dorsey, stated that there were "military and artillery pieces" stationed in Benedict. This assertion on the part of the British commander is not controverted by Dorsey.—(See Clement Dorsey's conversation with the commander, and herewith filed.) The facts, as contained in the above-recited documents, go conclusively to the support of Cusick's testimony in relation to the companies of the United States being stationed in Benedict.

The most open village, if resolutely defended, will cost many men before its fall. The village of Benedict, being located in an open plain, and situated immediately on the banks of the Patuxent river, from its peculiar localities—surrounded by creeks and marshes, the frame buildings, so far as the working of artillery pieces, affording no shelter—could not have been maintained for one hour against a superior force. In the next place, an officer would have displayed a great want of military knowledge in the disposition either of artillery or infantry to have stationed there a military force for any effective purpose, much less have attempted to oppose the landing of the enemy's troops, without constructing some work of defence behind which his men could find protection from the firing of the enemy's vessels-of-war. The conclusion seems to be irresistible, from these facts and circumstances, that the situation of our troops absolutely required the erection of a fortification. That such an entrenchment was thrown up there can be no doubt, for it is expressly stated that the tobacco was rolled out of the warehouse and used as a fortification.—(See John L. Dorsey's affidavit.)

These are the material circumstances attending the destruction of the tobacco at the Benedict warehouse, and in the face of them can there be doubt as to the cause of the destruction? Was it not palpably the use made of this tobacco, its change from a pacific to a hostile

character? Your petitioner ascribes the destruction of the tobacco to its use and occupation by the regulars of the United States service, and the preparation by them to repel the invasion by the British forces.—(See Cusick's testimony.) There is no principle better established than this, that if property is destroyed by one of the incidents to the situation and employment of our troops in which it is placed the government is liable.

Was this tobacco in the Benedict warehouse destroyed and carried away by the British troops? In the affidavits of Zachariah Sothoron, John Moran, and Austin Cusick, bearing date March 11, 1824, and herewith filed, it is distinctly stated that the tobacco at the Benedict warehouse was destroyed and carried away by the enemy, in consequence of the use to which it was appropriated by our troops, when said forces landed in Benedict. The affiants say, "that there was considerable quantity—say four or five hundred hogsheads—of tobacco in said warehouse when said force landed." Again, these deponents say they saw the enemy "burning and otherwise destroying tobacco in the said town of Benedict; not more than thirty hogsheads remained in and about the warehouse."

Your petitioners will remark that the foregoing affidavit was found in the State Department, and filed in a case pending before the board of commissioners, which assembled in the city of Washington, to adjust and examine into the validity of claims under the first article of the treaty of Ghent. According to the interpretation imposed upon this article it was deemed unnecessary to show how and in what manner the property was destroyed—it was merely necessary to establish the fact that the property was deported by the naval power of Great Britain, and within the waters of the United States at the time of the ratifications of the treaty of peace. Hence the *omission* on the part of the affiants to state that the destruction or the carrying away of the tobacco was in consequence of its being used as a fortification for our troops; all that was required of the claimant was to show its destruction and deportation.

The conclusion that a portion of the army of the United States were stationed in Benedict, and that the tobacco was used as a fortification and destroyed and carried away by the British forces, perfectly harmonizes with all testimony filed by your petitioner. The testimony of the deponents strengthen and support each other in all the positions assumed by your memorialists as regards the destruction of the tobacco in the Benedict warehouse. The precedents in favor of the claim now presented are full and complete.—(See the reports of the Committee of Claims, House of Representatives, No. 132, 29th Congress, 1st session, and reference to the case of James Tongue and others. See 15th Congress, 1st session, No. 391, House reports; 15th Congress, 1st session, 420, House reports.)

Independently of the intrinsic merits of the claim of your memorialists, it is contended that the principle of indemnity has been recognized and established by the decision in the case of James F. Sothoron, passed at December session, 1848, which is, in all its circumstances, far short of the present case. In that case the principle is

laid down that personal property shall be paid for by the government whenever it is converted to public use.—(See note No. 2.)

In the view which that committee formed of this case from the evidence, there can be no doubt they considered all the *government responsibility* attaching as soon as the occupation commenced by the American troops, and its consequent destruction by the enemy.—(See note No. 3.)

That, in the great lapse of time, it is a difficult work to procure testimony connected with the events of the late war with Great Britain; that many persons who witnessed the scene of what was then called the “Chesapeake depredations” have died, and but few survive to give a full history of the occurrences of that day. It cannot be expected that these events should be sustained by the same definite and precise proof as that which may be required according to the strict principles of a legal proceeding; but that your honorable bodies will consider the special circumstances of the case, and grant compensation in conformity with the principles of equity and justice. The 5th section of the act of 1816 declares “that where any property, impressed or taken by public authority for the use or subsistence of the army during the late war, has been destroyed, lost, or consumed, the owner of such property shall be paid the value thereof.” This section is general, and embraces every description of property. The precedents established and referred to in this memorial proves that Congress did not intend that the act of 1816 should form the boundary of relief; on the contrary, that it considered the special circumstances of each case, and grant indemnification in conformity with the principles of equity and expediency. There can be nothing in this section that sanctions, by the remotest implication, the doctrine that compensation should not be granted in all cases where property has been used for belligerent purposes and offensive operations.

The change of our amicable relations with a foreign power works a change in civil government, and destroys many of the securities by which we hold our property.

Your petitioners further state, that the evidence of this tobacco being stored in the warehouses at Magruder’s and Benedict is fully established by the tobacco notes, which were given by the inspectors in obedience to the laws of Maryland, regulating the inspection and safe keeping of the tobacco. By the act of Maryland, passed in 1801, chapter 63, section 18, it is declared, that the inspector or inspectors, who shall pass any tobacco, shall deliver as many notes, under the hand of the inspector or inspectors, to the owner, and in his name, as shall be required; in which note or receipt shall be expressed the place and time of reception, the mark of the warehouse, the number, and the gross, tare and nett weights for all tobacco inspected and passed; and, also, in the note shall be expressed whether of the first or second quality—the first quality to consist of tobacco clear of and unmixed with trash; and the said notes shall be payable to the said owner or bearer, and shall be current and receivable in payment of all debts and contracts for tobacco, or judgments and decrees on contracts for tobacco, according to the terms and intention of the contract, judgment, or decree, (as the case may be,) and shall be *transferable* from one person to

another, and shall be paid, upon demand, by the inspector or inspectors who signed the same.—(See affidavit of Joseph Young.)

Section 26 provides a penalty for forging manifests or notes.

Section 39 declares that inspectors "are declared to be answerable to the owners of any notes mentioned and described in such manifest, so far as to produce the same hogshead or hogsheads of tobacco belonging to any owner."—(See Dorsey's Laws of Maryland, page 453, volume 1.)

Your memorialists further state that he had stored in the warehouses at Magruder's 27 hogsheads of tobacco, and 30 hogsheads in Benedict warehouse; all of which were totally destroyed and carried off by the British, for which they claim compensation.

Your memorialists pray such relief in the premises as may be fair and reasonable.

NOTE No. 1.—See Brigadier General Winder's letter to Major Biscoe and herewith filed; also, General Winder's letter bearing date 27th July, 1814, to the Secretary of War, in which he says that Colonel Bowen's regiment, 300 strong, and a detachment of regulars, under the command of Lieutenant Colonel Scott, were stationed at Nottingham. See Niles' Register, volume 7, page 283; also, Admiral Cockburn's official report to Admiral Cockrane, in which he gives a detailed account of his naval operations on the waters of the Patuxent. He says, "that on his approaching the town, (Nottingham,) a few shots were exchanged between the boats and some of the enemy's cavalry."

NOTE No. 2.—See Senate Report No. 129, 30th Congress, 1st session. House of Representatives Report 57. The report of the Senate states, "that it is difficult to draw a distinction, in equity, between a claim for loss of buildings and for the personal property they contain."

NOTE No. 3.—See the case of John S. Stiles, adjudicated in the 27th Congress, 2d session. He claimed indemnity for vessels sunk for the defence of the city of Baltimore in 1814. The Judiciary Committee of the Senate say, "that it is the duty of the government to make compensation for them and the damages which their owners had sustained." An act passed for his relief, see volume 6 of United States Statutes at Large, page 126; also, the act for the relief of sundry citizens of Baltimore for the sinking of vessels at the mouth of the harbor of Baltimore.—(See volume 6 United States Statutes at Large, page 265.)

List of twenty-seven hogsheads of tobacco belonging to Joseph Janney, burned by the British naval forces from Magruder's warehouse.

M. M.	73.....	1,075—118.....	957
R. V. S.	91.....	1,090—108.....	982
R. V. S.	92.....	1,040—112.....	928
G. R.	67.....	1,033—123.....	910
B. D.	69.....	1,087—108.....	979
E. B.	59.....	1,002—121.....	881
H. R.	75.....	843—120.....	723
I. R.	28.....	1,075—100.....	975
P. E.	155.....	1,108—101.....	1,007
P. E.	50.....	1,256—118.....	1,138
P. E.	51.....	1,050—123.....	927
I. M.	227.....	1,075—104.....	971
I. H. G.	45.....	1,350—117.....	1,233
I. C.	14.....	1,224—121.....	1,103
I. P.	7.....	1,050—83.....	967

F. G.	18.....	925—101.....	824
I. C.	38.....	1,006—118.....	888
R. B. C.	46.....	1,008—107.....	901
I. W.	102.....	1,077— 86.....	991
I. W.	97.....	935—113.....	822
S. A.	142.....	1,075—100.....	975
G. W.	32.....	971—122.....	849
R. B.	352.....	1,008—106.....	902
B. R.	9.....	1,152—125.....	1,027
I. B.	175.....	1,031—112.....	919
T. S.	75.....	1,068—109.....	959
T. S.	73.....	1,087— 99.....	988

STATE OF MARYLAND, *Prince George's county, sct.*

Personally appeared before me, a justice of the peace for the county aforesaid, James Baden, and made oath upon the Holy Evangelry of Almighty God that the twenty-seven hogsheads tobacco, corresponding with the above list, were burnt in the warehouse on Patuxent river, called Magruder's warehouse, by the British naval forces, in the month of June, 1814. This deponent was inspector at the above warehouse at the time the above tobacco was burnt, and had the same under his care. Given under my hand this 21st day of July, 1828.

JOS. YOUNG.

MARYLAND, *Prince George's county, to wit:*

I hereby certify that Josias Young, esq., gentleman, before whom the within affidavit appears to have been made, and whose name is thereto subscribed, was at the time of taking and so doing, and still is, one of the State of Maryland's justices of the peace, in and for said county, duly commissioned and qualified, and to all whose acts, as such, full faith and credit is and ought to be given as well in courts of justice as thereout.

In testimony whereof I have hereto set my name and affixed my seal this twenty-first day of July, A. D. eighteen hundred and twenty-eight.

[L. S.]

AQUILA BEALL,

Clerk of Prince George's County Court.

List of thirty hogsheads of tobacco, belonging to Joseph Janney, taken by the British naval forces from Benedict warehouse.

E. A.	73.....	1,161—110.....	1,051
Z. W.	20.....	1,023—114.....	909

I. B.	103.....	959—103.....	856
I. B.	279.....	1,008—100.....	908
Z. H.	268.....	991— 98.....	893
I. E.	66.....	1,132—110.....	1,022
I. E.	35.....	1,106— 97.....	1,009
I. E.	36.....	1,162— 96.....	1,066
I. G.	59.....	1,025—110.....	915
R. T.	38.....	1,252—100.....	1,152
Z. W.	70.....	1,032—122.....	910
R. T.	74.....	1,012— 87.....	925
T. D.	114.....	1,085—102.....	983
G. M.	42	976— 87.....	889
T. I. R.	55.....	1,008—101.....	907
I. C.	354.....	1,016—105.....	911
I. W.	212.....	1,002—115.....	887
A. C.	75.....	983— 89.....	894
I. O.	68.....	962—111.....	851
I. P.	83.....	1,121—121.....	1,000
I. H. B.	316.....	1,034—105.....	929
I. H. B.	320.....	1,054—109.....	945
I. W.	42.....	1,012—101.....	911
W. D.	54.....	1,012—100.....	912
W. D.	55.....	1,054— 98.....	956
W. D.	56.....	1,058—107.....	951
A. L.	104.....	1,102—114.....	988
S. T.	34.....	1,016— 96.....	920
Z. W.	13.....	1,044—114.....	930
R. T.	38.....	1,118— 83.....	1,035

STATE OF MARYLAND, *Prince George's county, sct.*

Personally appeared before me, the subscriber, a justice of the peace for the county aforesaid, Benjamin Wood, and made oath upon the Holy Evangely of Almighty God that the thirty hogsheads tobacco, corresponding with the above list, were taken from the warehouse on Patuxent river, called Benedict warehouse, by the British naval forces in the month of June, 1814. This deponent was inspector at the above warehouse at the time the above tobacco was taken, and had the same under his care. Given under my hand this 21st day of July, 1828.

JAMES NAYLOR.

MARYLAND, *Prince George's county, sct.*

I hereby certify that James Naylor, esquire, gentleman, before whom the within affidavit appears to have been made, and whose name is thereto subscribed, was at the time of taking and so doing,

and still is, one of the State of Maryland's justices of the peace in and for said county, duly commissioned and qualified, and to all whose acts, as such, full faith and credit is and ought to be given, as well in courts of justice as thereout.

In testimony whereof I have hereto set my name and affixed the seal of my office this twenty-first day of July, A. D. [L. S.] eighteen hundred and twenty-eight.

AQUILA BEALL,
Clerk of Prince George's County Court.

ALEXANDRIA, 9th month 25th, 1823.

The notes for the above tobacco are in my possession.

JOSEPH JANNEY.

DECEMBER 16, 1850.

The memorial of the heirs of Joseph Janney, late of the town of Alexandria, deceased, respectfully represents, that the above two manifests of tobacco constitute a true and correct list of the tobacco lost by him in the warehouses therein stated, by the depredations of the enemy during the progress of the war of 1812, between the United States and Great Britain. In explanation of the cause of the delay which has arisen in the presentation of this claim to your honorable body, your memorialists respectfully represent, that the claim was presented to the board of commissioners and by them rejected in June, 1828; consequently your memorialists abandoned all hopes of realizing any remuneration for it until Congress passed acts granting relief, under precisely similar cases, to Dr. James Tongue and James T. Sothoron; they therefore deem it right and proper to present their claim for indemnity, and humbly pray your honorable body to grant them like indemnity, and they will, as in duty bound, ever pray.

WM. B. SCOTT,
Attorney.